



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

JUL 2 2012

VIA UPS OVERNIGHT DELIVERY

Ellen J. Kullman  
Chief Executive Officer  
E. I. du Pont de Nemours and Company  
1007 Market Street  
Wilmington, DE 19898

Rik L. Miller  
President, DuPont Crop Protection  
E. I. du Pont de Nemours and Company  
Stine-Haskell Research Center  
1090 Elkton Road  
Newark, DE 19711

**Re: Notice of Noncompliance and Request to Show Cause**

Dear Ms. Kullman and Mr. Miller:

Please be advised that the United States Environmental Protection Agency ("EPA" or the "Agency") has determined that E. I. du Pont de Nemours and Company ("DuPont") failed to comply with certain requirements of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), as amended, 7 U.S.C. §§ 136 *et seq.*, and implementing regulations set forth at 40 C.F.R. Parts 150-189, Subpart E. Specifically, EPA believes that DuPont distributed and/or sold misbranded pesticides in violation of Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), and failed to submit timely information in violation of Sections 12(a)(2)(B)(ii) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B)(ii) and 136j(a)(2)(N). FIFRA provides for a maximum statutory civil penalty of \$7,500 for each offense that occurred after January 12, 2009.

The Agency's determination is based on information obtained as part of EPA's ongoing investigation into "DuPont Imprelis Herbicide" (EPA Reg. No. 352-793) ("Imprelis"), including data and information submitted to EPA by DuPont. The Agency is issuing this Notice of Non-compliance and Request to Show Cause to give DuPont an opportunity to show why EPA's information is not correct and why EPA should not file an administrative complaint for civil penalties ("Complaint") for these alleged violations. A description of the relevant facts follows.

### Factual Background

On August 31, 2010, EPA conditionally registered Dupont's Imprelis pesticide as a selective broadleaf weed herbicide. The active ingredient in Imprelis is aminocyclopyrachlor. The approved label for Imprelis provides under the heading, "Product Information," the following:

This product can affect susceptible broadleaf plants directly through application to the foliage, stems and trunks as well as indirectly by root uptake from treated soils. Do not apply this product directly to, or allow spray drift to come in contact with, ornamental groundcovers, foliage plants, flowers, trees, shrubs, nearby crop plants or other desirable plants; or to the soil where potentially sensitive plants will be planted during the same season. Do not exceed specified application rates for any area and particular care must be taken within the dripline of trees and shrubs or other ornamental plants.

Under the heading, "Application for Lawns, Golf Courses and Other Turfgrass Areas," the label states, *inter alia*, "On cool season turfgrasses . . . when applications will not be made within 5 feet of ornamental groundcovers, foliage plants, flowers, trees, shrubs or other desirable plants, IMPRELIS™ herbicide may be applied at 6 fluid ounces of product per acre." Under the heading, "Restrictions," the label states: "Do not apply this product to exposed roots of trees and shrubs . . . Do not exceed specified application rates for any area and particular care must be taken within the dripline of trees and shrubs or other ornamental plants."

The label does not contain warning or caution statements about potential damage to trees when used in accordance with the approved label.

Beginning in June 2011, EPA began receiving numerous reports of adverse incidents related to the use of Imprelis. In a letter dated July 18, 2011, the Agency reminded DuPont of its obligation as a registrant under Section 6(a)(2) of FIFRA to notify EPA of any "additional factual information regarding unreasonable adverse effects on the environment" of Imprelis. The letter also specified that DuPont was to report, *inter alia*, all studies and data pertaining to aminocyclopyrachlor's toxicity to plants, currently in DuPont's possession, that had not previously been submitted to EPA. DuPont submitted its responses to this letter on July 28, 2011, and August 31, 2011. In a letter dated August 18, 2011, EPA set forth how and when DuPont was to submit adverse effects information received after DuPont's initial response to EPA's July 18, 2011 letter. DuPont's response to this letter is ongoing.

On August 11, 2011, EPA issued a Stop Sale, Use, or Removal Order ("SSURO") to DuPont regarding Imprelis, under the authority of Section 13(a) of FIFRA. On September 8, 2011, upon an agreement between EPA and DuPont, the Agency approved the registrant's registration amendment request for Imprelis by imposing certain additional terms and conditions, including a prohibition on the sale, distribution or marketing of Imprelis by DuPont. In response to the SSURO, on September 19, 2011, EPA approved a plan submitted by DuPont that provided for the collection and return of Imprelis to DuPont from customers and end-users. On September 22, 2011, EPA issued a request for information to DuPont, seeking, *inter alia*, production, sales, distribution and marketing information for Imprelis. On November 8, 2011, DuPont

submitted its response to the information request. Based on information collected as part of the investigation, EPA has determined that DuPont has violated FIFRA as follows:

### Alleged Violations

#### 1. DuPont Distributed and/or Sold Misbranded Pesticides

Section 12(a)(1)(E) of FIFRA 7 U.S.C. § 136j(a)(1)(E), makes it unlawful for any person in any state to distribute or sell to any person any pesticide which is misbranded. A pesticide is "misbranded" if the labeling accompanying the pesticide "does not contain directions for use which are necessary for effecting the purpose for which the product is intended and if complied with, together with any requirements under section [3(d) of FIFRA], are adequate to protect health and the environment." Section 2(q)(1)(F) of FIFRA, 7 U.S.C. § 136(q)(1)(F). A pesticide is also "misbranded" if its "label does not contain a warning or caution statement which may be necessary and if complied with, together with any requirements imposed under [Section 3(d) of FIFRA,] is adequate to protect health and the environment." Section 2(q)(1)(G) of FIFRA, 7 U.S.C. § 136(q)(1)(G).

Based on information collected as part of the investigation, EPA believes that Imprelis is misbranded within the meaning of Sections 2(q)(1)(F) and (G) of FIFRA, 7 U.S.C. §§ 136(q)(1)(F) and (G). On approximately 325 occasions from October 2010 through at least June 2011, DuPont distributed and/or sold Imprelis to various "person[s]," as that term is defined in Section 2(s) of FIFRA, 7 U.S.C. § 136(s). Each such distribution and/or sale of the misbranded pesticide Imprelis constitutes a separate unlawful act under Section 12(a)(1)(E) of FIFRA, 7 U.S.C. § 136j(a)(1)(E), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### 2. DuPont Failed to Submit Timely Information to EPA

Section 6(a)(2) of FIFRA, 7 U.S.C. § 136d(a)(2), requires that "[i]f at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, the registrant shall submit such information to the Administrator." EPA's registration regulations require that "[a]n applicant furnish with his application for registration any factual information of which he is aware regarding unreasonable adverse effects of the pesticide on man or the environment, which would be required to be reported under FIFRA Section 6(a)(2) if the product were registered." 40 C.F.R. § 152.50(f)(3).

Pursuant to 40 C.F.R. § 159.165, a registrant is required to submit to EPA the results of studies of the toxicity of a pesticide if, relative to all previously submitted studies, when tested at the maximum label application rate or less, more than 25 percent of terrestrial plants show adverse effects on plant life cycle functions and growth such as germination, emergence, plant vigor, reproduction and yields. Pursuant to 40 C.F.R. § 159.195, a registrant is required to submit to EPA information other than that described in 40 C.F.R. § 159.165 – 159.188, "if the registrant knows, or reasonably should know, that if the information should prove to be correct,

EPA might regard the information alone or in conjunction with other information about the pesticide as raising concerns about the continued registration of a product or about the appropriate terms and conditions of the registration of a product.” Information reportable under 40 C.F.R. § 159.165 and 40 C.F.R. § 159.195 must be received by EPA not later than the 30<sup>th</sup> calendar day after the registrant first possesses or knows of the information. 40 C.F.R. § 159.155. Failure to submit reportable information under 40 C.F.R. § 159.165 and 40 C.F.R. § 159.195 is an unlawful act under Sections 12(a)(2)(B)(ii) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B)(ii) and 136j(a)(2)(N). 62 *Fed. Reg.* 49370 (September 19, 1997).

Based on information collected as part of the investigation, EPA believes DuPont possessed or knew of information reportable under 40 C.F.R. § 159.165 and/or 40 C.F.R. § 159.195 but failed to submit such information until July 28, 2011, in response to a request made under Section 6(a)(2) of FIFRA by the Agency, well beyond the 30-day deadline required by 40 C.F.R. § 159.155. Each failure to submit information reportable under 40 C.F.R. § 159.165 and/or 40 C.F.R. § 159.195 constitutes a separate unlawful act under Sections 12(a)(2)(B)(ii) and 12(a)(2)(N) of FIFRA, 7 U.S.C. §§ 136j(a)(2)(B)(ii) and 136j(a)(2)(N), for which penalties may be assessed pursuant to Section 14(a) of FIFRA, 7 U.S.C. § 136l(a).

#### Opportunity to Show Cause

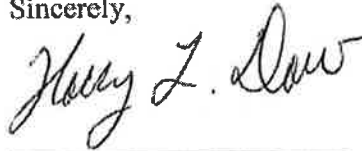
Before filing a Complaint, EPA is offering DuPont an opportunity to confer with EPA and present any information to EPA that DuPont believes EPA should consider relating to the alleged violations. EPA invites DuPont to discuss settlement, including payment of a civil penalty, at this show cause conference. In determining an appropriate civil penalty amount for these alleged violations, EPA will consider the statutory factors of Section 14 of FIFRA, 7 U.S.C. § 136l, and EPA's December 2009 FIFRA Enforcement Response Policy, available at: <http://www.epa.gov/compliance/resources/policies/civil/fifra/fifra-erp1209.pdf>. Please be advised that, notwithstanding this letter, EPA may file a Complaint at any time on or before September 28, 2012, without further notice to you.

DuPont may assert a claim of confidentiality under 40 C.F.R. Part 2, Subpart B, for any portion of the information DuPont submits to EPA that meets the requisite criteria. Information subject to a business confidentiality claim may be made available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If DuPont fails to assert a business confidentiality claim, EPA may make all submitted information available without further notice to any member of the public who requests it. EPA may also use any information DuPont submits in support of an administrative, civil, or criminal action.

Additionally, certain companies may be required to disclose to the Securities and Exchange Commission the existence of certain pending or known to be contemplated environmental legal proceedings (administrative or judicial) arising under Federal, State or local environmental laws. Please see the attached “Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings” for more information about this requirement and to aid you in determining whether DuPont is subject to the same.

EPA encourages DuPont to contact EPA within the next seven (7) business days to schedule a show cause conference. To do so, please contact Magda Rodriguez-Hunt by telephone at (215) 814-2128 or by e-mail at [rodriguez-hunt.magda@epa.gov](mailto:rodriguez-hunt.magda@epa.gov). For any legal-related questions, please contact Janet E. Sharke by telephone at (215) 814-2689 or by e-mail at [sharke.janet@epa.gov](mailto:sharke.janet@epa.gov).

Sincerely,

A handwritten signature in cursive script, reading "Harry L. Daw".

---

Harry Daw, Associate Director  
Land and Chemicals Division  
Office of Toxics and Pesticides

Enclosure

cc: Karl Sherman, Esq.  
Warren Lehrenbaum, Esq.

## NOTICE OF SECURITIES AND EXCHANGE COMMISSION REGISTRANTS' DUTY TO DISCLOSE ENVIRONMENTAL LEGAL PROCEEDINGS

Securities and Exchange Commission regulations require companies registered with the SEC (e.g., publicly traded companies) to disclose, on at least a quarterly basis, the existence of certain administrative or judicial proceedings taken against them arising under Federal, State or local provisions that have the primary purpose of protecting the environment. Instruction 5 to Item 103 of the SEC's Regulation S-K (17 CFR 229.103) requires disclosure of these environmental legal proceedings. For those SEC registrants that use the SEC's "small business issuer" reporting system, Instructions 1-4 to Item 103 of the SEC's Regulation S-B (17 CFR 228.103) requires disclosure of these environmental legal proceedings.

If you are an SEC registrant, you have a duty to disclose the existence of pending or known to be contemplated environmental legal proceedings that meet any of the following criteria (17 CFR 229.103(5)(A)-(C)):

- A. Such proceeding is material to the business or financial condition of the registrant;
- B. Such proceeding involves primarily a claim for damages, or involves potential monetary sanctions, capital expenditures, deferred charges or charges to income and the amount involved, exclusive of interest and costs, exceeds 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis; or
- C. A governmental authority is a party to such proceeding and such proceeding involves potential monetary sanctions, unless the registrant reasonably believes that such proceeding will result in no monetary sanctions, or in monetary sanctions, exclusive of interest and costs, of less than \$100,000; provided, however, that such proceedings which are similar in nature may be grouped and described generically.

Specific information regarding the environmental legal proceedings that must be disclosed is set forth in Item 103 of Regulation S-K or, for registrants using the "small business issuer" reporting system, Item 103(a)-(b) of Regulation S-B. If disclosure is required, it must briefly describe the proceeding, "including the name of the court or agency in which the proceedings are pending, the date instituted, the principal parties thereto, a description of the factual basis alleged to underlie the proceedings and the relief sought."

You have been identified as a party to an environmental legal proceeding to which the United States government is, or was, a party. If you are an SEC registrant, this environmental legal proceeding may trigger, or may already have triggered, the disclosure obligation under the SEC regulations described above.

This notice is being provided to inform you of SEC registrants' duty to disclose any relevant environmental legal proceedings to the SEC. This notice does not create, modify or interpret any existing legal obligations, it is not intended to be an exhaustive description of the legally applicable requirements and it is not a substitute for regulations published in the Code of Federal Regulations. This notice has been issued to you for information purposes only. No determination of the applicability of this reporting requirement to your company has been made by any governmental entity. You should seek competent counsel in determining the applicability of these and other SEC requirements to the environmental legal proceeding at issue, as well as any other proceedings known to be contemplated by governmental authorities.

If you have any questions about the SEC's environmental disclosure requirements, please contact the SEC Office of the Special Senior Counsel for Disclosure Operations at (202) 551-3115.